

Message Text

PAGE 01 STATE 298254
ORIGIN NEA-10

INFO OCT-01 ISO-00 L-03 ERDA-05 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 FPC-01 H-01 INR-07 INT-05
NSAE-00 NSC-05 OMB-01 PM-05 USIA-06 OES-07 SP-02
SS-15 STR-05 TRSE-00 ACDA-12 FEA-01 /106 R

DRAFTED BY NEA/EGY:CAKENNEDY:DWL
APPROVED BY NEA/EGY:DONEWBERRY
L/NEA - M. PEAY

-----044294 150400Z /70

R 142047Z DEC 77
FM SECSTATE WASHDC
TO AMEMBASSY CAIRO

LIMITED OFFICIAL USE STATE 298254

FROM NEA/EGY

E.O. 11652: N/A

TAGS: EINV, BDIS, EG

SUBJECT:PETROLUEM: LVO CASE

REF: A) CAIRO 19171 , B) CAIRO 14591

1. WE ARE SENDING YOU IN THIS CABLE TEXT OF INFORMAL
ASSESSMENT OF LVO CASE PREPARED BY L/NEA. FROM CAREFUL
REVIEW OF AVAILABLE DOCUMENTS, IT APPEARS THAT LVO DOES
HAVE A CREDIBLE AND REASONABLE CASE, AND IT ALSO HAS A
REMEDY AVAILABLE (ARBITRATION) WHICH IT HAS NOT PURSUED.
ON BASIS OF THIS ASSESSMENT AND DEMONSTRATED SUBSTANTIAL
CONGRESSIONAL INTEREST IN CASE, WE RECOMMEND THE EMBASSY
TAKE EARLY OPPORTUNITY TO REVIEW CASE WITH EGPC AGAIN
OR, IF SEEN AS MORE EXPEDITIOUS APPROACH, THAT AMBAS-
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 02 STATE 298254

SADOR REVIEW CASE WITH MINPET TO ENCOURAGE A SYMPATHETIC
RECONSIDERATION OF LVO'S CLAIM BY EGPC AND EXPRESS OUR
HOPE THAT MATTER CAN BE RESOLVED WITHOUT RECOURSE TO
ARBITRATION.

2. FOLLOWING IS TEXT OF ASSESSMENT:

QUOTE:

MEMORANDUM ON THE LEGAL CLAIMS ASSERTED IN THE LVO/EGPC

DISPUTE

THIS MEMORANDUM IS AN INFORMAL L/NEA ASSESSMENT PREPARED FOR INTERNAL USE TO ASSIST NEA/EGY IN DETERMINING WHAT ACTION, IF ANY, IT MIGHT TAKE WITH REGARD TO THE LVO/EGPC DISPUTE.

AFTER CAREFUL REVIEW OF (A) THE "CONCESSION AGREEMENT FOR PETROLEUM EXPLORATION AND PRODUCTION" (HEREINAFTER THE AGREEMENT) ENTERED INTO BY LVO, INTERNATIONAL, INC. (LVO) AND THE EGYPTIAN GENERAL PETROLEUM CORPORATION (EGPC), (B) A LEGAL MEMORANDUM PREPARED BY LVO'S LAWYER, AND (C) OTHER RELEVANT BACKGROUND DOCUMENTS SUPPLIED BY NEA/EGY, AND AFTER VIEWING THESE MATERIALS IN A LIGHT MOST FAVORABLE TO LVO, IT APPEARS THAT LVO DOES HAVE A CREDIBLE AND REASONABLE CASE THAT, UNDER THIS AGREEMENT, EGPC CANNOT LEGALLY PREVENT IT FROM DISPOSING OF DOLS 750,000 WORTH OF SURPLUS WELL-CASING PIPE WHICH IT OWNS. EGPC ALSO HAS A COLORABLE ARGUMENT. IF THE PARTIES CANT RESOLVE THE DISPUTE THEMSELVES, THE MOST APPROPRIATE NEXT STEP WOULD BE ARBITRATION IN STOCKHOLM AS PROVIDED FOR IN THE CONTRACT. THERE IS NO REASON TO BELIEVE THAT SUCH ARBITRATION WOULD BE UNFAIR TO LVO OR THAT EGPC WOULD FAIL TO HONOR AN AWARD IN LVO'S FAVOR. SINCE THE CONTRACT IS SAID TO BE FAIRLY LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 03 STATE 298254

STANDARD FOR EGPC, ARBITRATION MAY BE THE ONLY REASONABLE COURSE FOR EGPC IN ORDER TO AVOID VOLUNTARILY ESTABLISHING A BROADLY APPLICABLE ADVERSE PRECEDENT.

DISCUSSION

IN SUPPORT OF ITS ASSERTED RIGHT TO BAR LVO FROM SELLING OR OTHERWISE DISPOSING OF THE PIPE IN QUESTION, EGPC RELIES UPON ARTICLE VIII(A)(2) OF THE AGREEMENT. THAT PROVISION READS AS FOLLOWS,

EGPC SHALL BECOME THE OWNER OF ALL ASSETS ACQUIRED AND OWNED BY (LVO), IN CONNECTION WITH THE OPERATIONS CARRIED OUT BY (LVO) IN ACCORDANCE WITH THE FOLLOWING:

(2) TITLE TO FIXED AND MOVABLE ASSETS SHALL BE TRANSFERRED AUTOMATICALLY AND GRADUALLY FROM (LVO) TO EGPC AS THEY BECOME SUBJECT TO DEPRECIATION IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE VII; HOWEVER, THE FULL TITLE TO THE FIXED AND MOVABLE ASSETS SHALL BE TRANSFERRED AUTOMATICALLY FROM (LVO) TO EGPC AT THE END OF THE YEAR WHEN ITS TOTAL COST HAS BEEN RECOVERED BY (LVO) IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE VII, OR AT THE TIME OF TERMINATION OF THIS AGREEMENT, WHICHEVER FIRST OCCURS.

THUS, VIII(A)(2) MAKES CLEAR THAT EGPC'S RIGHT TO ACQUIRE

TITLE TO LVO'S ASSETS (E.G., THE PIPE) ARISES ONLY UPON THE OCCURRENCE OF EITHER OF TWO EVENTS. ONE IS THAT THE EXPENSES INCURRED BY LVO DURING THE EXPLORATION STAGE MUST HAVE BEEN RECOVERED BY LVO FROM THE SALE OF CRUDE OIL WHICH IT HAS PRODUCED BEFORE TRANSFERENCE OF THE ASSETS TO EGPC CAN LEGALLY OCCUR. THIS CONTINGENCY PRESUPPOSES A DISCOVERY OF OIL BY LVO -- AN EVENT WHICH NEVER OCCURRED.

THE OTHER EVENT REQUIRED BY VIII(A)(2) BEFORE TRANSFERENCE OF THE ASSETS CAN LEGALLY OCCUR IS TERMINATION OF THE LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 04 STATE 298254

AGREEMENT. HOWEVER, ON THE BASIS OF THE FACTS PRESENTED, IT CANNOT BE SAID THAT THE AGREEMENT HAS TERMINATED. ADMITTEDLY, LVO HAS GIVEN EGPC NOTICE OF ITS INTENTION TO SUSPEND ITS OPERATIONS TEMPORARILY, BUT THIS DOES NOT CONSTITUTE A BREACH OF THE AGREEMENT WHICH MIGHT ALLOW EGPC TO TERMINATE. LVO'S RIGHT TO CONTINUE TO EXPLORE FOR OIL BETWEEN NOW AND THE END OF THE CURRENT EXTENDED EXPLORATION PERIOD (NOVEMBER 23, 1979) HAS NOT BEEN WAIVED OR SURRENDERED (SEE ARTICLE IV(B)); NOR HAS LVO REPUDIATED THE AGREEMENT OR ASSIGNED ITS RIGHTS TO ANOTHER.

HENCE, DURING THIS PERIOD OF SUSPENDED OPERATIONS, THE AGREEMENT BETWEEN LVO AND EGPC REMAINS IN EFFECT AND WITH IT THE RIGHTS AND LIMITATIONS ACCORDED TO EACH PARTY PURSUANT TO THE AGREEMENT. SINCE TITLE TO THE PIPE HAS NOT YET BEEN VESTED IN EGPC IN ACCORDANCE WITH VIII(A)(2), THE PIPE CONTINUES TO BE THE PROPERTY OF LVO. IN THE ABSENCE OF A PROVISION IN THE AGREEMENT OR IN EGYPTIAN LAW WHICH RESTRICTS LVO'S RIGHT TO DISPOSE OF ITS PROPERTY, LVO SHOULD BE FREE TO SELL OR OTHERWISE DISPOSE OF ITS PROPERTY.

THE ONLY PROVISION IN THE AGREEMENT WHICH PROVIDES FOR A RESTRICTION UPON DISPOSITION OF ASSETS IS VIII(B), WHICH PROVIDES AS FOLLOWS,

DURING THE TERM OF THIS AGREEMENT AND THE RENEWAL PERIOD (LVO IS) ENTITLED TO THE FULL USE IN THE AGREEMENT AREA, AND ANY OTHER AREA APPROVED BY EGPC, OF ALL FIXED AND MOVABLE ASSETS. (LVO) AND EGPC SHALL NOT DISPOSE OF THE SAME EXCEPT WITH THE AGREEMENT OF THE OTHER.

ALTHOUGH LVO'S LAWYER DOES NOT DISCUSS THIS PROVISION IN LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 05 STATE 298254

HIS LEGAL MEMORANDUM, LVO COULD REASONABLY ARGUE THAT THIS

PROVISION IS NOT A RESTRICTION UPON THE FREE DISPOSITION OF ASSETS BELONGING TO THE RESPECTIVE PARTIES BUT RATHER IS A RESTRICTION UPON THE DISPOSITION OF ASSETS WHOLLY OR PARTIALLY OWNED BY THE OTHER PARTY. THE COGENCY OF THIS VIEW IS STRENGTHENED BY THE OBSERVATION THAT VIII(B) BY ITS TERMS ENVISAGES AN EXTENDED PERIOD OF TIME WITHIN WHICH THE AGREEMENT WOULD BE IN EFFECT (THE DEVELOPMENT PERIOD FROM THE DATE OF THE FIRST COMMERCIAL WELL DISCOVERY WAS SET FOR TWENTY YEARS AND THE RENEWAL PERIOD FOR TEN YEARS, ARTICLE III(D)).

IT IS REASONABLE, THEREFORE, TO ASSUME THAT OVER THE COURSE OF SO MANY YEARS OF COMMERCIAL OPERATIONS SOME OF LVO'S ASSETS WOULD, AS PRESCRIBED IN VIII(A)(2), GRADUALLY BE TRANSFERRED TO EGPC AND THAT VIII(B) ACTS AS A PRECAUTIONARY MEASURE TO PROTECT EACH PARTY FROM HAVING THE OTHER DISPOSE OF ASSETS WHICH MAY BE OWNED IN WHOLE OR IN PART BY THE OTHER PARTY AND WHICH ARE NEEDED FOR THE OPERATION. THE FACT THAT LVO IN ITS LETTER OF MARCH 23, 1977 REQUESTED THAT THE LEGAL DEPARTMENT OF THE EGYPTIAN GENERAL PETROLEUM AUTHORITY GIVE ITS APPROVAL TO THE SALE BY LVO OF SURPLUS DRILLING AND OFFICE EQUIPMENT IN EGYPT DOES NOT NECESSARILY SUGGEST A CONTRARY INTERPRETATION OF VIII(B). FOR, THIS MAY HAVE BEEN DONE FOR SEVERAL REASONS: FOR EXAMPLE, IT MAY HAVE BEEN THE EXTENSION TO EGPC OF THE RIGHT OF FIRST REFUSAL TO BUY THE EQUIPMENT, OR IT MAY HAVE BEEN A WELL-ADVISED PRECAUTIONARY STEP TO ASSURE THAT THERE WERE NO PROFIT OR OTHER RESTRICTIONS UNDER EGYPTIAN LAW UPON THE SALE OF SUCH ASSETS TO OTHER PETROLEUM INDUSTRY COMPANIES.

LVO'S CONTENTION THAT EGPC CANNOT, UNDER THE AGREEMENT, PRECLUDE IT FROM DISPOSING OF ITS OWN PROPERTY IS BOLSTERED BY ARTICLE XI(D) UPON WHICH LVO RELIES AND WHICH PROVIDES THAT,
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 06 STATE 298254

ANY OF THE ITEMS IMPORTED INTO (EGYPT) EITHER EXEMPT OR NON-EXEMPT FROM CUSTOMS DUTIES, TAXES OR IMPOSTS UNDER THIS ARTICLE MAY BE EXPORTED BY THE IMPORTING PARTY AT ANY TIME WITHOUT THE PAYMENT OF ANY EXPORT DUTY, OR IMPOST. (EMPHASIS ADDED.)

BEARING IN MIND THE RULE OF CONTRACT INTERPRETATION THAT A CONTRACT SHOULD BE INTERPRETED IN THE WAY WHICH RENDERS IT REASONABLE AND INTERNALLY CONSISTENT, XI(D) CAN BE SO HARMONIZED WITH VIII(A) AND (B). THUS, IT CAN BE ARGUED THAT, ALTHOUGH VIII(A) PROVIDES FOR THE POSSIBLE TRANSFER OF LVO'S ASSETS TO EGPC, VIII(B) AND XI(D) PRESERVE THE RIGHT OF LVO TO DISPOSE AT ANY TIME OF ASSETS TOTALLY OWNED BY IT, INCLUDING THE DUTY-FREE EXPORT OF SUCH

ASSETS.

ANOTHER ARGUMENT NOT MADE BY LVO'S LAWYER BUT SUPPORTIVE OF LVO'S INTERPRETATION OF VIII(A) IS THAT THE OPENING CLAUSE OF THAT PROVISION STATES THE GENERAL PROPOSITION THAT EGPC "SHALL BECOME THE OWNER OF ALL ASSETS ACQUIRED OR OWNED BY (LVO) IN CONNECTION WITH THE OPERATIONS CARRIED OUT BY (LVO)...." (EMPHASIS ADDED.) THE SURPLUS WELL-CASING PIPE IN QUESTION IS PRESUMABLY PIPE WHICH HAS NOT YET BEEN USED "IN CONNECTION WITH OPERATIONS CARRIED OUT," BUT RATHER IS AVAILABLE FOR POSSIBLE FUTURE USE IN LVO'S OPERATIONS, IF LVO CHOOSES TO RESUME OPERATIONS. THUS, EVEN IF THERE HAD BEEN A COMMERCIAL DISCOVERY OR A TERMINATION OF THE AGREEMENT, LVO COULD ARGUE THAT EGPC'S RIGHT, PURSUANT TO VIII(A)(2), TO ACQUIRE LVO'S ASSETS WOULD STILL BE LIMITED TO THOSE ASSETS USED IN CONNECTION WITH OPERATIONS WHICH HAVE ALREADY BEEN CARRIED OUT, NOT PROSPECTIVE OPERATIONS.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 07 STATE 298254

FINALLY, IT SHOULD BE NOTED THAT LVO HAS THE RIGHT, PURSUANT TO ARTICLE XXII, TO HAVE THIS DISPUTE "FINALLY SETTLED BY ARBITRATION...HELD AT STOCKHOLM, SWEDEN AND CONDUCTED IN ACCORDANCE WITH THE RULES OF CONCILIATION AND ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE." XXII(B). MOREOVER, BOTH EGPC AND LVO HAVE PROVIDED FOR THE EFFECTIVE ENFORCEMENT OF THE ARBITRAL AWARD IN XXII (H), WHICH PROVIDES THAT,

JUDGMENT IN THE AWARD RENDERED MAY BE ENTERED IN ANY COURT HAVING JURISDICTION OR APPLICATION MAY BE MADE TO SUCH COURT FOR A JUDICIAL ACCEPTANCE OF THE AWARD AND AN ORDER OF ENFORCEMENT, AS THE CASE MAY BE.

MOREOVER, IN XXII(K), EGPC, LIKE LVO, HAS COMMITTED ITSELF TO APPLYING THE ARBITRATION PROVISION IN "GOOD FAITH" AND "IN CONFORMITY WITH THE PRINCIPLES OF LAW NORMALLY RECOGNIZED BY CIVILIZED NATIONS IN GENERAL, INCLUDING THOSE WHICH HAVE BEEN APPLIED BY INTERNATIONAL TRIBUNALS." NOT ONLY SHOULD THE FOREGOING BE REASSURING TO LVO'S CONSIDERATION OF TAKING THE MATTER TO ARBITRATION, IF REQUIRED, BUT ALSO REASSURING SHOULD BE THE FACT THAT EGYPT HAS A RECOGNIZED GOOD REPUTATION FOR HONORING CLAIMS BY AMERICAN NATIONALS PRESENTED TO IT FOR SETTLEMENT.

GIVEN THIS AVAILABLE AND PROMISING REMEDY FOR ADJUDICATION OF LVO'S CLAIM, IT WOULD NOT BE ADVISABLE FOR THE UNITED STATES GOVERNMENT TO INJECT ITSELF INTO THIS PRIVATE COMMERCIAL DISPUTE AT THIS TIME EXCEPT PERHAPS TO ENCOURAGE THE EGYPTIANS TO GIVE A SYMPATHETIC RECONSIDERATION TO LVO'S CLAIM AND INTERPRETATION OF THE AGREEMENT,

WHICH WOULD AVOID UNNECESSARY LITIGATION EXPENSE FOR BOTH
SIDES. IF, FOR SOME REASON, THE PARTIES FAIL TO AGREE
UPON AN EXTRA-JUDICIAL RESOLUTION OF THE DISPUTE AND IF
AFTER ARBITRATION AN AWARD IS MADE TO LVO WHICH EPGC RE-
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 08 STATE 298254

FUSES TO HONOR, THEN IT MIGHT BE PROPITIOUS AT THAT TIME
FOR LVO TO APPROACH THE UNITED STATES GOVERNMENT ABOUT
TAKING UP THIS MATTER OFFICIALLY WITH THE EGYPTIANS AT AN
APPROPRIATELY HIGH LEVEL.

CONCLUSION

BASED UPON THE FOREGOING ANALYSIS, IT APPEARS THAT LVO
DOES HAVE A DEFENSIBLE CASE THAT ITS RIGHT TO DISPOSE OF
ITS PROPERTY HAS BEEN WRONGFULLY INFRINGED BY EGPC. THERE-
FORE, LVO SHOULD SEEK TO RESOLVE THIS DISPUTE EITHER BY
CONTINUED NEGOTIATIONS WITH EGPC OR BY REFERRING THE DIS-
PUTE TO ARBITRATION AS PROVIDED FOR IN THE AGREEMENT. IT
WOULD BE PREMATURE FOR THE U.S. GOVERNMENT TO BECOME SUB-
STANTIALLY INVOLVED IN THIS DISPUTE. END QUOTE. CHRISTOPHER

LIMITED OFFICIAL USE

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 22-Sep-1999 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DISPUTES, PETROLEUM, BUSINESS FIRMS
Control Number: n/a
Copy: SINGLE
Sent Date: 14-Dec-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE298254
Document Source: ADS
Document Unique ID: 00
Drafter: NEA/EGY:CAKENNEDY:DWL
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Expiration:
Film Number: D770466-0468
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t197712111/baaaaeuqz.tel
Line Count: 298
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Message ID: 2ff55dfc-c188-dd11-92da-001cc4696bcc
Office: ORIGIN NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 02-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 119490
Secure: OPEN
Status: NATIVE
Subject: LVO CASE
TAGS: EINV, BDIS, EG
To: CAIRO
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/2ff55dfc-c188-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009